

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

XENEX DISINFECTION SERVICES LLC,

Plaintiff,

vs.

THE CLOROX COMPANY,

Defendant.

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CIVIL ACTION NO.
5-15-cv-407

NOTICE OF REMOVAL

Defendant The Clorox Company (“Defendant”), by and through its undersigned counsel, respectfully notifies this Court of the removal of the pending suit styled *Xenex Disinfection Services LLC v. The Clorox Company* (the “State Court Action”), from the District Court of the 150th Judicial District of Bexar County, Texas, pursuant to 28 U.S.C. § 1446(a). In support hereof, Defendant states as follows:

A. BACKGROUND

1. Plaintiff Xenex Disinfection Services LLC (“Plaintiff”) is a limited liability company organized under the laws of the State of Texas with its principal place of business in the State of Texas. (Plaintiff’s Original Petition, Exhibit A, at ¶ 2.)
2. Defendant is a corporation organized under the laws of the State of Delaware with its principal place of business in the State of California. (Petition, Exhibit A, at ¶ 3.)
3. On March 27, 2015, Plaintiff filed the State Court Action, Cause No. 2015-CI-05178, in the 150th District Court of Bexar County, Texas. (*See* Petition, Exhibit A.)

4. Defendant was served with this lawsuit on April 27, 2015 and thus files this Notice of Removal within the 30-day time period required by 28 U.S.C. § 1446(b).

5. Plaintiff's Original Petition (the "Petition"), the Civil Cover Sheet, Request for Process, and Citation (Exhibit A) constitutes the only "process, pleadings, and orders served upon" of which Defendant is aware. *See* 28 U.S.C. § 1446(a).

B. PLAINTIFF'S ALLEGATIONS AND RELIEF SOUGHT¹

6. The Petition alleges that Plaintiff makes truthful marketing and advertising statements on its website, including but not limited to the effect that: (i) the EPA defines mercury as a toxic pollutant; (ii) the Xenex bulb contains no toxic mercury, but rather contains environmentally friendly xenon gas and does not require special handling or disposal; (iii) all UV competitors use bulbs that contain mercury which requires special handling incident to bulb breakage; (iv) depending upon the amount of mercury present in a mercury bulb, special disposal requirements may apply under federal and state regulations; and (v) the Xenex device is faster than mercury devices. (Petition, Exhibit A, at ¶ 7.)

7. The Petition further alleges that Defendant, a competitor of Plaintiff, contends such statements are false or misleading descriptions of fact and/or that Xenex's marketing and advertising statements on its website violate the Lanham Act, 15 U.S.C. § 1051, *et seq.* and/or other laws. (Petition, Exhibit A, at ¶ 7.)

8. Plaintiff seeks declaratory relief that its website statements at issue are truthful and accurate statements of fact or statements of opinion that are not prohibited by the Lanham Act or otherwise prohibited by law, and/or that such statements constitute protected commercial

¹ The allegations of the Petition are accepted as true for purposes of this Notice of Removal only. Defendant does not concede the facts alleged and expressly reserves its right to answer, move to dismiss, or otherwise respond to the Petition.

speech under the First Amendment to the United States Constitution. (Petition, Exhibit A, at ¶ 11.)

9. Plaintiff further seeks an award of court costs and reasonable and necessary attorneys' fees. (Petition, Exhibit A, at ¶ 12.)

B. BASIS FOR REMOVAL

10. This Court has removal jurisdiction because this is a civil action “of which the district courts of the United States have original jurisdiction” in that it is an action “arising under the . . . laws . . . of the United States.” 28 U.S.C. §§ 1441(a) and 1331.

11. In particular, federal question jurisdiction exists in this action because Plaintiff purports to seek declaratory relief relating to the propriety of its advertising and marketing statements under the Lanham Act, 15 U.S.C. § 1051, *et seq.*

12. Moreover, Plaintiff claims that its website statements constitute protected commercial speech under the First Amendment to the United States Constitution.

13. Claims for violations of Federal statutes and/or under the United States Constitution, or for a declaration to vindicate rights under Federal statutes and/or the United States Constitution, provide this Court with original jurisdiction over this action and make removal proper. *See* 28 U.S.C. § 1331; *see also Target Strike, Inc. v. Marston & Marston, Inc.*, 524 F. App'x 939, 943 (5th Cir. 2013) (recognizing a claim under the Lanham Act as grounds for federal jurisdiction).

14. Venue is proper in this Court because the 150th Judicial District Court of Bexar County, Texas is located within the Western District of Texas, San Antonio Division.

C. JURY DEMAND

15. Plaintiff did not demand a jury in the State Court suit.

D. PROCEDURAL REQUIREMENTS

16. Defendant will promptly give written notice of this Notice of Removal to Plaintiff and file a copy of this Notice of Removal with the clerk of the State Court where the suit has been pending. *See* 28 U.S.C. §§ 1446(a), (d).

17. By filing this Notice of Removal, Defendant does not concede any of the facts alleged, the propriety of the purported claims, or waive any defenses or counterclaims which may be available to it.

WHEREFORE, Defendant respectfully notices removal of this case to the United States District Court for the Western District of Texas pursuant to 28 U.S.C. §§ 1441 *et seq.* and 1331.

Respectfully submitted,

By: /s/ Derick J. Rodgers
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**ATTORNEYS FOR DEFENDANT
THE CLOROX COMPANY**

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing document has been served on the following as by fax or electronic service on this 18th day of May, 2015:

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/s/ Derick J. Rodgers
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